

FILED/ACCEPTED

MAY 19 2011

Federal Communications Commission
Office of the Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
MARITIME COMMUNICATIONS/LAND	)	EB Docket No. 11-71
MOBILE, LLC	)	File No. EB-09- 11 -1751
	)	FRN: 001358779
)	
Applicant for Modification of Various Authorizations in	)	Application File No.
the Wireless Radio Services	)	0004193328
)	
DUQUESNE LIGHT COMPANY, et al.)	
)	
For Commission Consent to the Assignment of Various)	
Authorizations in the Wireless Radio Services)	

To: THE COMMISSION (via Marlene H. Dortch, Secretary)
cc: Chief Administrative Law Judge Richard L. Sippel

**DUQUESNE LIGHT COMPANY
PETITION FOR RECONSIDERATION,
REQUEST FOR REMOVAL FROM HEARING DESIGNATION ORDER, AND
REQUEST FOR GRANT OF APPLICATION**

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SUMMARY

Duquesne Light Company (“Duquesne”) sought to acquire additional internal radio capacity from Maritime Communications/Land Mobile LLC (“MCLM”). The grant of the application for assignment of that spectrum from MCLM to Duquesne, FCC File No. 0004193328 (the “Application”), has been delayed for over a year by an investigation by the Commission into various issues related to MCLM’s participation in Auction 61.

On April 19, 2011, the Commission released an *Order to Show Cause, Hearing Designation Order, and Opportunity for Hearing* (the “Order”) in the above-referenced matter.¹ In the Order, the Commission singled-out the Southern California Regional Rail Authority (“SCRRA”) as the only applicant with an MCLM frequency assignment pending that the Commission suggested be “removed from the ambit of this Hearing Designation Order.” Order ¶ 7, n. 7. The Commission noted that, because the rail agency operates in a safety-critical environment and must follow approaching governmental safety mandates, its need for the requested additional radio capacity raises “potential safety of life considerations” if not granted. *Id.*

The same is true of Duquesne’s Application. Like SCRRA, Duquesne uses its radio spectrum for critical infrastructure functions, including storm restoration work, where reliable radio communications are integral to employee and public safety of life considerations. Further, and again like SCRRA, Duquesne is required by governmental mandate to institute a smart metering system by a date certain and requires immediate grant of its Application so that it may move forward within the time allowed for its smart meter deployment. Finally, Duquesne seeks

¹ Duquesne entered a timely Notice of Appearance in this hearing on May 9, 2011.

to use the spectrum for the very same Smart Grid purpose identified by the Commission: “to construct and operate [its] own mission-critical broadband network[.]”

Thus, Duquesne seeks: (1) reconsideration of inclusion of its Application in the hearing designation order (HDO); (2) to be removed from the HDO; and (3) grant of its Application.

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Duquesne Light Company ("Duquesne"), by its counsel and pursuant to sections 1.106 and 1.41 of the Commission's rules, 47 C.F.R. §§ 1.106 & 1.41, requests that the Commission reconsider its designation of Duquesne's above-referenced application for hearing and remove the application from its hearing designation order. Further, Duquesne requests that its application be granted because such action will further public safety, allow the utility company to comply with state mandates related to smart metering, and further the public interest. Such action also will be a concrete step towards accomplishing the Smart Grid objectives outlined in the National Broadband Plan.

BACKGROUND

I. Duquesne Light Company

Duquesne was founded in 1880. Today, Duquesne provides safe and reliable electric power service to approximately 584,000 residents, businesses, government institutions, and hospitals throughout southwestern Pennsylvania, including in the City of Pittsburgh.² Duquesne employs over 1,200 employees in furtherance of this mission.

Duquesne operates a large power network, including 45,000 miles of overhead power lines.³ The operation of the company is supported by a complex radio communications system that provides several functions, including: voice communications between storm recovery centers and mobile units and between mobile units, internal survey and control data (SCADA), and data communications amongst parts of its electric network and outside networks. *See* attached Exhibit A, Declaration of Mark Sprock.

II. Duquesne's Application for Assignment (FCC File No. 0004193328)

On April 21, 2010, Maritime Communications/Land Mobile LLC ("MCLM") and Duquesne submitted to the Commission a complete Application for Assignment of Authorization, which is FCC File No. 0004193328 (the "Application"). The Application sought disaggregation of certain sub-bands from station WHG750, which is licensed to MCLM in the Automated Maritime Telecommunications Service (AMTS).⁴

The Application states that Duquesne intends to use the spectrum in support of "a substantial capital improvement of its facilities in a deeply rural portion of its service area. To protect the safety of the lives of its personnel and to protect the safety of property of inestimable

² *See* <http://www.duquesnelight.com/StormCenter/UnderstandingElectricityandSafety/ServiceArea/>.

³ *See id.*

⁴ For a complete list of sub-bands, or for a further explanation of the disaggregation sought, *see* Application, "Explanation of Application," thereto.

value, [Duquesne] requires improved radio communications.” *See* Application, “Public Interest Statement” thereto. The Public Interest Statement further indicated that only this spectrum provided the required coverage to Duquesne in the referenced rural service area. *Id.*

III. Duquesne’s Government-Mandated Smart Metering Requirements

On Oct. 15, 2008, then Pennsylvania Governor Edward Gene “Ed” Rendell signed into law House Bill 2200, known as Act 129 of 2008. Act 129 imposes new requirements on electric distribution companies like Duquesne with the stated goal of reducing energy consumption and demand. Act 129 includes a requirement for electric distribution companies with greater than 100,000 customers to submit to the Pennsylvania Public Utility Commission (PUC) for approval a smart meter technology procurement and installation plan. Duquesne Light is required to file a full deployment schedule, along with the total cost of implementation, of its smart meter plan by December 31, 2011.

An essential part of Duquesne’s smart metering system is the communications backbone necessary to carry the metering data. Duquesne has investigated the use of numerous licensed and unlicensed bands and concluded that the 217 MHz and 219 MHz bands involved in the Application provide the best smart meter capabilities for the company in terms of range, coverage over the unique terrain of southwestern Pennsylvania, and the cost and availability of equipment. *See* Sprock Declaration at 3. This smart meter use is in addition to the internal company use already discussed above and noted in the Application.

Duquesne would like to build its smart meter network around the frequencies at issue in the Application, but needs assurances that the Application will be granted before doing so. *See id.* Because the company is required to submit its deployment schedule and costs to the Pennsylvania PUC by the end of this year—and the radio network is a crucial part of the

development of the deployment plan and estimate of cost—Duquesne requires action on its Application as soon as possible. See id.

DISCUSSION

I. The Commission Has Authority to Grant Duquesne's Petition

A. 47 C.F.R. § 1.106 Permits Reconsideration Here

In this proceeding, the Commission has designated for hearing before an administrative law judge several issues, including “whether the captioned applications filed by or on behalf of Maritime Communications/Land Mobile, LLC should be granted.” Order ¶ 62(j). Duquesne's Application is included in the Hearing Designation Order (HDO). The HDO requires Duquesne “be made a party to this hearing in its capacity as an applicant.” *Id.* ¶ 71. Notably, failure by Duquesne to participate in the hearing will result in its Application being “dismissed with prejudice for failure to prosecute [same].” *Id.* ¶ 68. Duquesne seeks reconsideration of its inclusion in the HDO.

The Commission's rules for reconsideration generally allow orders of the Commission, like the HDO, to be reconsidered by the Commission upon request. *See* 47 C.F.R. § 1.106(a)(1) (“Petitions requesting reconsideration of a final Commission action will be acted on by the Commission.”). In the instance where the Commission action is the designation of a case for hearing, the party seeking reconsideration must also show that “the petition relates to an adverse ruling with respect to petitioner's participation in the proceeding.” *Id.* It is not evident here, however, that Duquesne actually is involved in a Commission *case*. *Compare* 47 C.F.R. § 1.106(a)(1) (regarding reconsideration of *cases* set for hearing) *to, for example,* 47 C.F.R. § 1.110 (referencing instances where an *application* may be set for hearing).

Duquesne submits that under either rubric, however, reconsideration is appropriate here.

First, the Order is a final action of the Commission subject to its reconsideration. Although there exists in this proceeding an on-going “case” between MCLM and various “Petitioners,” as well as between MCLM and the Commission’s Enforcement Bureau,⁵ it is not evident that the designation of Duquesne’s pending *Application* for hearing somehow converts this administrative matter into a *case* subject to the heightened standard for reconsideration.

Second, to the extent Duquesne is now considered by the Commission to be embroiled in a “case,” Duquesne’s petition is related to an adverse ruling with respect to its “participation in the proceeding.” Specifically, and as stated in the Order, Duquesne’s failure to appear and participate in the hearing subjects its Application to summary dismissal *with prejudice*. The Commission’s determination in the Order that Duquesne will have its Application dismissed outright is an adverse ruling subject to review under the rule. The ruling is also adverse because Duquesne seeks to have its Application be granted expeditiously and not participate in the hearing regarding MCLM.

B. 47 C.F.R. § 1.41 Permits Reconsideration, Removal of the Application from the HDO, and Grant of the Application

To the extent the Commission does not believe a petition for reconsideration is appropriate from Duquesne because the utility is subject to the requirement that it show an adverse ruling—and the Commission further finds that its determination that Duquesne will forfeit its Application if it fails to appear is *not* such a ruling—then Duquesne requests in the alternative that the Commission consider the issues raised herein pursuant to its informal powers set forth in section 1.41 of its rules, 47 C.F.R. § 1.41. Section 1.41 permits a party to seek specific relief where no formal procedure otherwise exists. In this case, if Duquesne cannot meet

⁵ See, generally, Order ¶¶ 13-22 (describing Wireless Telecommunications Bureau Proceeding). Further, MCLM is subject to an on-going Enforcement Bureau investigation. See *id.*, ¶¶ 23-26. These two *bona fide* cases have been designated for hearing in the Order.

the standards for a petition for reconsideration, then no apparent procedure would otherwise exist for it to seek the relief it requires, namely, to have its Application “removed from the ambit of this Hearing Designation Order,” and ultimately granted. Order ¶ 7, n. 7. Thus, the Commission would be authorized to act pursuant to rule 1.41.

Rule 1.41 also provides a means for the Commission to remove the Application from the HDO, and ultimately to grant the Application. Indeed, the rule contemplates use for “application and licensing matters pertaining to the Wireless Radio Services.” *Id.* Duquesne submits, therefore, that rules 1.106 and 1.41 provide the Commission with authority to provide the three forms of relief Duquesne seeks: (1) reconsideration of inclusion of its Application in the hearing designation order (HDO); (2) removal of the Application from the HDO; and (3) grant of the Application. Further support for this request is set forth below.

II. The Commission Should Reconsider its Order and Remove Duquesne’s Application from the Ambit of its Hearing Designation Order

In its Order, the Commission stated that Southern California Regional Rail Authority (SCRRA) intends to use the spectrum it seeks from MCLM in furtherance of safety initiatives and in furtherance of obligations under federal mandate. *Id.* The Commission correctly proposed that SCRRA’s application for assignment of spectrum from MCLM should be removed from the HDO.⁶ *Id.* The Commission should reconsider its failure to apply the same considerations to Duquesne’s Application; the Commission should remove the Application from the HDO; and, ultimately, should grant the Application.

⁶ The Commission requested that SCRRA provide a showing that it was entitled to such treatment. SCRRA filed its “Showing Pursuant to Footnote 7” (the “SCRRA Showing”) on May 9, 2011 with the Commission.

A. Duquesne's Application Seeks to Increase Public and Worker Safety and to Improve its Critical Infrastructure.

Reliable communications on Duquesne's radio network are essential to worker and public safety, especially during storm recovery and other emergencies. Duquesne uses its radio spectrum to facilitate communications between utility crews and between those crews and its storm recovery and communications centers. Duquesne's radio network also supports data communications and communications with local governments, first responders and other utility crews involved in storm and disaster recovery. The communications network maintained by Duquesne is vital to the safe and reliable operation, maintenance and recovery of its critical utility infrastructure.⁷

Duquesne's Application seeks certain spectrum in the 217-219 MHz band to enhance and upgrade its radio network. The Application states that a primary purpose of the request for consent to assignment was that the new spectrum would bring "a substantial capital improvement of [Duquesne's] facilities in a deeply rural portion of its service area." *See* Application, "Public Interest Statement" thereto.⁸ Further, the Application states that as described above, the grant of assignment for this spectrum is necessary to further "protect the safety of the lives of [Duquesne] personnel and to protect the safety of property of inestimable value." *Id.*

Duquesne uses its radio network—including the spectrum sought in the Application—in furtherance of the very same "safety of life considerations" the Commission noted with regards to SCRRA. Order ¶ 7, n.7. For this reason, the Commission also should remove Duquesne's Application from the ambit of the HDO.

⁷ Almost fifteen years ago, then President William Jefferson "Bill" Clinton issued Executive Order 13010, which identified utility electric networks as be a part of the nation's critical infrastructure that is "so vital that their incapacity...would have a debilitating impact on the defense or economic security of the United States." Exec. Order No. 13,010, 61 Fed. Reg. 37,347 (Jul. 15, 1996).

⁸ For example, the frequencies would be used to communicate with sectionalizers in order to cut power automatically between certain areas during storm recovery.

B. Duquesne's Applied-For Spectrum Also Will Serve Smart Meter Initiatives

Duquesne is required to provide to the Pennsylvania PUC by the end of this year a detailed plan, including cost and deployment strategy, of its smart meter program.⁹ This legal directive is set forth by Pennsylvania Act 129 and the various implementing orders of the Pennsylvania PUC. Thus, in addition to upgrading antiquated communications facilities in rural parts of its service territory, the spectrum that Duquesne seeks in the Application will be instrumental to its governmentally-mandated smart metering program.

The Commission supports smart meter technology, noting that: "Smart meters, which are located at customers' homes and provide two-way communications with their utility, will play a major role in the Smart Grid. FERC estimates that the number of smart meters deployed will rise from eight million today to 80 million in 2019." Omnibus Broadband Initiative, Federal Communications Commission, Connecting America: The National Broadband Plan 2010 ("National Broadband Plan"), Section 12.1. In the National Broadband Plan, the Commission indicated various forms of theoretical support for utilities in their pursuit to implement smart meter and smart grid, and stated that:

The country should pursue three parallel paths. First, existing commercial mobile networks should be hardened to support mission-critical Smart Grid applications. Second, utilities should be able to share the public safety mobile broadband network for mission-critical communications. Third, utilities should be empowered to construct and operate their own mission-critical broadband networks. Each approach has significant benefits and

⁹ Smart metering is commonly understood as being a method for electricity customers to have more control over their utility bill. The technology allows consumers to view energy consumption in (or close to) real time, which allows them to understand—and limit—their energy consumption.

tradeoffs, and what works in one geographic area or regulatory regime may not work as well in another. Rather than force a single solution, these recommendations will accelerate all three approaches.

Id. Grant of Duquesne's Application would be a concrete manifestation of the Commission's goals and ideals set forth in the National Broadband Plan.

As the Commission acknowledges above, finding appropriate spectrum for smart metering is not easy. Duquesne's service territory in southwestern Pennsylvania includes rural and urban areas, and includes a varied topography of forest, valleys, and mountains. The company has investigated smart meter spectrum options in the 900 MHz licensed and unlicensed bands, as well as Wi-Max and other alternatives. *See* Sprock Declaration at 3. No solution has proven as resilient (or with as good of range) across the Duquesne service area as spectrum in or near the 220 MHz band. *Id.* Equipment also is readily available, proven, and affordable in this band, which is not the case throughout several of the alternatives Duquesne has investigated. *Id.*

Thus, Duquesne intends to build its smart meter system, in part, around licenses in the 220 MHz vicinity, and the spectrum at issue in the Application is critical to this pursuit. Notably, Duquesne is seeking to develop this network via available spectrum (sought in the Application) and without need for less-reliable commercial alternatives or seeking band sharing with public safety entities.

Again, and similar to SCRRA, Duquesne is subject to a governmental mandate (Act 129) to implement its smart meter program. As with SCRRA, the time is fast approaching for final decisions and implementation by Duquesne of its smart meter initiative.¹⁰ Accordingly, the

¹⁰ Duquesne also notes that smart metering includes an inherent safety aspect. The smart meter system is (or will be) tied to a larger smart *grid*, which monitors numerous electric distribution and transmission systems. Duquesne

Commission should remove the Application from the HDO and grant the Application as soon as possible.

C. No Rationale Exists for Treating Duquesne Different From SCRRA

Duquesne and SCRRA are in fundamentally the same position. Both entities offer a necessary service (electricity, transportation) to the public. Both services carry with them inherent dangers that the entities each seek to mitigate to the greatest extent possible. Both Duquesne and SCRRA have on file with the Commission applications that indicate the considerable need for disaggregated spectrum sought to be assigned by MCLM. Further, in the SCRRA Showing, and in the instant filing, both parties elaborated upon their need for the sought spectrum—and for the need for their applications to be granted as quickly as possible. Finally, both entities are subject to strict government-mandated timelines to implement initiatives that have been deemed to be in the interests of the public (smart metering, rail safety).

By all appearances, therefore, Duquesne and SCRRA are similarly situated with respect to their pending applications. Yet, SCRRA was offered in the Order the chance to remove its application from the HDO, while Duquesne was not. “Patently inconsistent application of agency standards to similar situations lacks rationality and is arbitrary.” *See Contractors Transp. Corp. v. United States*, 537 F.2d 1160, 1162 (4th Cir. 1976). Although the Commission expressed the understandable reasons for its suggestion as to why SCRRA should have its application removed from the HDO, it did not explain why that same treatment was not afforded Duquesne. “[W]hen an agency treats two similar transactions differently, an explanation for the agency’s actions must be forthcoming.” *Baltimore Gas & Elec. Co. v. Heintz*, 760 F.2d

will be able to monitor and detect surges, outages, or other problems in the system in real time. Smart meters and the entire smart grid should allow outages to be identified and rectified more quickly, and in many cases, avoided. The reliable provision of electricity to homes, hospitals, schools and the like all will benefit from smart meter and smart grid applications.

1408,1418 (4th Cir. 1985). The Commission appears to have arbitrarily determined that SCRRA should be provided an opportunity to opt out of the HDO, but did not allow that of other similarly-situated applicants, including especially Duquesne, which intends to use the assigned spectrum for safety of life and other applications mandated by the government—just like SCRRA.

Such an arbitrary determination is in violation of the Administrative Procedures Act and must be reconsidered by the Commission. *See* 5 U.S.C. § 706(2)(A) (requiring a reviewing court to strike down arbitrary decisions of a federal agency). Thus, the Commission should reconsider its exclusion of Duquesne's Application from the HDO and should remove it from the HDO.

III. The Commission Should Grant Duquesne's Application

Once Duquesne's Application is removed from the HDO, as requested above, the Commission should turn to grant of the Application. Duquesne filed its complete Application in April of 2010, over one year ago. As set forth herein, grant of Duquesne's Application is in the public interest, and need not be delayed by the proceeding against MCLM.

A. Grant of Duquesne's Application is in the Public Interest

The spectrum Duquesne seeks from MCLM in its Application will serve two primary roles. First, as noted in the Application, the spectrum provides relief to the outdated data communications system—often twisted pair copper running between utility poles—used by Duquesne in its most rural territories. *See* Sprock Declaration at 2. As Duquesne stated in its Application, this improved communications will “protect the safety of the lives of its personnel,” protect utility infrastructure, and ultimately inure to the benefit of its customers in these regions.

Second, Duquesne has developed a smart meter platform, in part, around the frequencies sought in its Application. As set forth above and in the attached declaration, these frequencies in

the 217-219 MHz band are superior to other options the company has tested. *Id.* at 2. Duquesne must complete its deployment plan and cost estimate for its smart metering system *this year*.

The radio network configuration undergirding the smart metering system is a primary and crucial component to Duquesne's entire plan.

In short, Duquesne's Application seeks use of spectrum to advance the safe operations of its system, to protect public and worker safety, and to help introduce smart metering. These uses are undoubtedly in the public interest and support grant of the Application.

B. The *Jefferson Radio* Policy Should Not Apply

In its filing, SCRRA suggests that grant of its application for assignment from MCLM may raises issues in light of *Jefferson Radio v. FCC*, 340 F.2d 781, 783 (D.C. Cir. 1964). *See* SCRRA Showing at 12. If the Commission believes that its policy in *Jefferson Radio* applies, Duquesne supports and incorporates here SCRRA's arguments for why the Commission should grant an exception to its policy in this case, including use of MCLM's offered escrow arrangement discussed in the SCRRA Showing. *Id.*

Duquesne does not believe, however, that the holding in *Jefferson Radio* should control or delay the outcome it seeks in this Petition. In *Jefferson Radio*, the D.C. Circuit upheld the Commission's policy that "prohibits any licensee from transferring a broadcast station at full value while a proceeding that might lead to license forfeiture is pending." *Coalition for Preservation of Hispanic Broadcasting v. FCC*, 931 F.2d 73, 76 (D.C. Cir. 1991) (emphasis supplied). The license at issue here, however, is not for a broadcast station, or even for a full license, but for a small portion of a single AMTS license that MCLM and Duquesne seek to disaggregate for internal, non-commercial, non-broadcast use by the utility.

Duquesne is mindful that “the Commission has recognized that prior misconduct can have a material bearing on qualifications for non-broadcast [] licensees.” *In the Matter of Lockheed Corporation*, 17 FCC Rcd 13160, 13167 (2002). However, the Commission also has held that where an initial license was granted to an entity, and a review of that grant was subsequently undertaken, a lesser standard than *Jefferson Radio* may be appropriate, especially in a case not involving broadcast licenses.

In *In the Matter of XM Radio, Inc.*, 15 FCC Rcd 24484 (2000), for example, the Commission was asked to review the transfer of control of XM Radio to WorldSpace without Commission approval, including the transfer of XM’s Digital Audio Radio Service (DARS) licenses. A third party, Primosphere, claimed that pursuant to *Jefferson Radio* the Commission should refrain from granting the application for transfer of the DARS licenses until after Primosphere’s pending application for review was decided. *Id.* at 24486. The Commission declined to do so. *Id.* (“In *Jefferson Radio*, because the applicant’s initial license application was denied, the applicant in that case had no license to transfer. In this case, XM Radio was found qualified for and was issued an initial license by the Commission. We find that the more appropriate precedent for this case is that of *MCI Communications Corporation* where the Commission allowed MCI to transfer control of its Direct Broadcast Satellite (“DBS”) license subject to the resolution of a pending Application for Review of its initial license grant.” (footnote omitted)).

Duquesne submits that the Commission has the discretion regarding how best to move forward, and that here it need not follow *Jefferson Radio*, but rather a modified *XM Radio* approach. In light of the public interest and other factors Duquesne has shown in this Petition, it requests that the Commission not only remove Duquesne’s Application from the HDO, but also

grant it—without restriction or being subject to the ultimate result of the show cause hearing regarding MCLM.

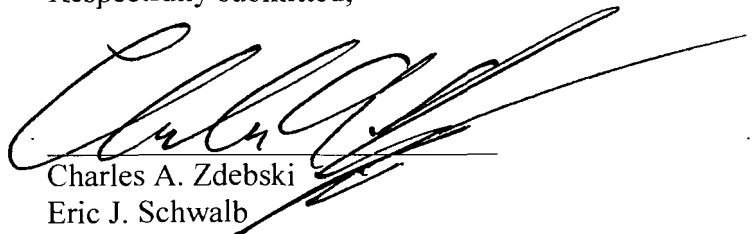
Here, MCLM was already granted the relevant license before the pending proceeding arose. Duquesne is an innocent third-party purchaser. It does not seek to make commercial use of the assigned spectrum. Rather, it requires it to supplement and replace outdated data communications systems in its rural territories, and to implement required smart metering and smart grid applications. All of these purposes are in support of the public interest. *See Mountain View Communications, Inc.*, 24 FCC Rcd 13516 (Media Bureau 2009). In fact, Duquesne’s use of its desired spectrum is precisely the type of use to which the Commission wants to see spectrum put in general, *see* 47 U.S.C. § 151 (“promoting safety of life and property”), and in the Smart Grid context in particular (“construct and operate their own mission-critical broadband networks”). No significant reason exists for the Commission to delay or deny Duquesne the benefit of the spectrum it seeks via its Application and no cause will be served by holding its Application in abeyance for the months or years that the Commission’s prosecution of MCLM will require. Should the Commission have concerns or adverse findings regarding MCLM, it has the necessary powers to fashion appropriate remedies without harming Duquesne’s important and substantial public safety and electric grid operational and reliability interests.

CONCLUSION

For the reasons stated above, Duquesne respectfully requests the Commission to:

- (1) reconsider its inclusion of Duquesne and its Application in the HDO;
- (2) remove Duquesne and its Application from the ambit of the HDO; and
- (3) grant Duquesne's Application.

Respectfully submitted,

A large, stylized handwritten signature in black ink, likely belonging to Charles A. Zdebski, is written over a horizontal line.

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Dated: May 19, 2011

CERTIFICATE OF SERVICE

I, Charles A. Zdebski, certify that on this 19th day of May, 2011, I caused a true and correct copy of the foregoing Duquesne Light Company Petition For Reconsideration, Request For Removal From Hearing Designation Order, And Request For Grant Of Application to be served via first-class mail, postage prepaid, upon:

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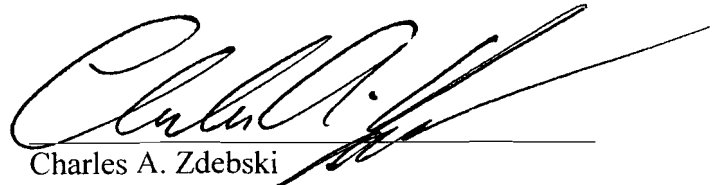
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Charles A. Zdebski

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
MARITIME COMMUNICATIONS/LAND	)	EB Docket No. 11-71
MOBILE, LLC	)	File No. EB-09-IH-
	)	1751
	)	FRN: 001358779
)	
)	
Applicant for Modification of Various Authorizations in	)	Application File No.
the Wireless Radio Services	)	0004193328
)	
DUQUESNE LIGHT COMPANY, et al.)	
)	
For Commission Consent to the Assignment of Various)	
Authorizations in the Wireless Radio Services)	

DECLARATION OF MARK SPROCK

I, Mark Sprock, attest as follows:

Background

1. I am the Manager of Communications for Duquesne Light Holdings, the parent company of Duquesne Light Company ("Duquesne"). As the Manager of Communications, I am tasked with oversight of all FCC licenses held by Duquesne, as well as for the oversight of the licensed wireless communications network used by the company, including as discussed herein.

2. I have worked for Duquesne since 1981 and have been in this position since 2007.

3. I hold a Bachelor of Science Degree in Electrical Engineering from the University of Pittsburgh and a Master of Science Degree in Industrial Administration from Carnegie Mellon University.

Duquesne's Communications Needs

4. Duquesne operates a complex communications system that allows workers to communicate with each other throughout the company's nearly 700-square mile service territory. The system also allows Duquesne to send data communications, and to cut power remotely when needed. The most critical use of Duquesne's communications system occurs during service outages, severe weather, and other emergencies. During these times, Duquesne employees are required to work under often severe conditions. Reliable voice and data communications are crucial during these times.

5. Duquesne also uses wireless communications for supervisory control and data acquisition (SCADA), and communications between other utilities, municipalities and police and fire departments.

Duquesne's Application (FCC File No. 0004193328)

6. Duquesne sought in the early part of 2010 to improve the reliability of our radio network in certain rural parts of our service territory, where internal data communications often relied upon old copper lines that were not integrated well into the overall communications network. In these areas, which are in some areas mountainous, heavily forested, and/or in deep valleys, Duquesne determined that licenses in or near 220 MHz provided the best coverage and range for the data communications needs of the company. In addition, in this band, equipment is available, reliable, and affordable.

7. Duquesne therefore entered into an agreement with Maritime Communications / Land Mobile, LLC ("MCLM") for the assignment of a limited amount of spectrum in the 217 and 219 MHz bands. Those bands are a part of station WHG750 licensed to MCLM.

8. The parties submitted to the FCC an Application for Assignment of Authorization to disaggregate ten pathways from WHG750 to Duquesne. The “Application” was filed on April 21, 2010. The Application remains pending.

9. The Application states that the requested spectrum is intended to “protect the safety of the lives of its personnel and to protect the safety of...” Duquesne’s infrastructure. See Application, “Public Interest Statement.” Of course, improvements to the safe and reliable operation of the Duquesne system also benefit the general public, including the company’s residential, business, and institutional electricity customers.

Duquesne’s Smart Meter Obligations

10. Duquesne is required by the Pennsylvania Act 129 of 2008 to implement a smart metering system in our service territory. Duquesne is required to submit for approval with the Pennsylvania Public Utility Commission our deployment plan and the estimated costs of the plan by the end of this year.

11. One of the biggest challenges Duquesne has faced in crafting our smart meter plan is finding available and workable spectrum to operate the smart metering system. As it turns out, after testing Wi-Max, licensed 900 MHz, and unlicensed spread-spectrum bands, we have determined that a preferred platform for smart metering communications is principally within the vicinity of 220 MHz. This is largely for the same reasons—coverage, range, reliability, known-cost and the like—that made this spectrum appealing for upgrading company infrastructure in its rural areas.

12. Duquesne would like to center parts of our smart metering system around the spectrum sought in the Application. We are unable to do that, however, until


the Application is granted by the FCC and Duquesne can rely upon the availability of that spectrum.

Duquesne Need for Grant of Application

13. Duquesne has an immediate need for grant of the Application. The spectrum Duquesne seeks in the Application will be used to further the company's continuing mission to improve operations and safety. The spectrum also will be used in furtherance of our mandate from the Commonwealth of Pennsylvania to deploy a successful smart metering program.

14. Because Duquesne must report our deployment plan by December 31, 2011, we need action on the Application as soon as possible, so that we may either move forward in and around the 220 MHz band, or if the Application is rejected, have time to patch together a system from the best of the known, lesser alternatives. In either event, Duquesne respectfully requests that the FCC act on the Application no later than July 31, 2011.

I declare under penalty of perjury that the information and statements contained in this Declaration are true and correct to the best of my knowledge, recollection and belief.

A handwritten signature in black ink, reading "Mark Sprock", is written over a horizontal line.

Mark Sprock
Duquesne Light Company

Dated: May 19, 2011